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VIRGINIA LAW REGISTER.

JNO. GARLAND POLLARD, EDITOR, Richmond, Va.

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We present in this issue the likeness of Honorable E. W. Saunders, the judge of the Seventh Circuit. He was born in Franklin county, Virginia, on October 25th, 1860, and has always resided in the county of his birth. He was taught at home till he was fourteen years of age, when he became a pupil of the Bellevue High School of Bedford county, which he attended for three sessions. After spending the years 1877-1878 at home, he devoted two sessions to work in the academic department of the University of Virginia. During the session of 1880-1881 he was associated with Professor Frank P. Brent in the conduct of a high school at Onancock in Accomac county. He then returned to the university for the session of 1881-1882, and obtained his B. L. degree at the end of that session.

He began the practice of the law at Rocky Mount, in the county of his birth, in the fall of 1882. He was elected to the legislature in November, 1887, and was successively re-elected a member of six additional legislatures.

When, in 1901, the Hon. S. G. Whittle, the judge of the Fourth Circuit, was elevated to the supreme bench, Judge Saunders was selected to fill the position he had vacated, and when the new system went into effect under the Constitution of 1902, he became judge of the Seventh Circuit, a position which he now worthily and most acceptably fills.

Judge Saunders' life has been a busy one, abounding in usefulness to his state and people. In the legislature he was first chairman of the Committee on Privileges and Elections, and afterwards of the Committee on Courts of Justice. In 1899 he was elected Speaker of the House, which position he retained till his election as judge.

He was also the patron of many important statutes, during his legislative career, amongst which may be mentioned:

An act requiring railroads to fence their road-beds, under certain limitations, or to pay for stock killed by them. Acts 1897-8, p. 279.

An act permitting the amendment of justices' warrants on appeal and correction of defects, omissions and irregularities, in the appellate court. Acts 1893-4, p. 508.

An act relating to the amendment in appellate court of criminal warrants or issue of a new warrant. Acts 1897-8, p. 292.

The Negotiable Instrument Act. Acts 1897-8, p. 896.

An act providing that in any case where an action of covenant will lie, assumpsit may be maintained. Acts 1897-8, p. 103.

An act empowering a court in an action at law, or suit in equity, to abate the action or suit as to any party improperly joined, and to proceed thereafter by or against the others as if no such misjoinder had occurred. Acts 1895-6, p. 453.

Judge Saunders has received many evidences of the esteem and affection of those with whom he has been associated. Amongst these testimonials was a silver service from his associates in the legislature when he was elected speaker in 1899, and another when he was elected judge in 1901. He was also presented with a handsome edition of the Century Dictionary and Cyclopedia and Atlas by the Lynchburg bar when he held the last term of his court in that city in January, 1904.

As a legislator Judge Saunders was as able, zealous and untiring in opposing evil legislation as he was in advancing measures he believed to be for the good of his state; whilst as a judge he is learned, studious and impartial, giving to every position taken in the argument of a cause the most careful and intelligent consideration.

N. C. MANSON, JR.

Much space in the present issue is devoted to *McCue's Case*, which during the past month has attracted wide attention among the members of the profession, and has been the topic of extended discussion in the newspapers throughout the country. In reporting the case we quote at length from the very able petition for a writ of error, and publish in full the supplemental petition, which is a strong but unique contribution to the literature of legal advocacy. We likewise print in full the in-

The McCue Case.

structions given by the trial court. They will be of value as precedents, inasmuch as they have been declared to be sound by the court of last resort. The vigorous opinion of the court shows that it was thoroughly convinced of the guilt of the prisoner and was determined to allow no fine-spun technicalities to save his neck. The court's conclusion as to his guilt has been fully justified by his own confession made before he stepped upon the gallows. The opinion, however, on some of the points raised, does not seem to meet with the general approval of the bar.

We have before us the first annual report of the Board of the Virginia State Library for the year ending June 30, 1904. The recent constitutional convention made the library a part of the educational system of the state by putting it under the control of five directors appointed by the State Board of Education. The state library has hitherto been of little use in comparison with the modern progressive library, but under the efficient management of the new board and the thoroughly equipped librarian, Mr. John P. Kennedy, its usefulness has been greatly extended. The librarian's report to the board contains much matter of interest. He gives an account of the formation of the library, 1823-1830, and shows that the total amount expended in its maintenance has been \$334,242.64; that the number of volumes contained in the library is 43,272. This is exclusive of the law library, which contains 15,623 volumes. The report also shows that within one year 17,000 readers have been served in the reading room. The total number of books called for and consulted by these readers was 35,000. It has been generally supposed that works of fiction are at the present day most popular, but the report shows that less than 4,000 works of fiction were served to the readers, and that the demand for works of history is double that of fiction. A most interesting account is given of the Inter-Library Loan Association, by which the 125 Virginia libraries reporting to the state are granted the privilege of borrowing from each other and from the state library any book which may be needed for any special purpose. Under a recent act of the General Assembly travelling libraries have been established, and neat cases holding about fifty books are sent to various places throughout the state. There are now five travelling libraries. The counties of Prince Edward, Caroline, North-

umberland, Chesterfield, and Hanover are now enjoying them. Applications have been received from many other counties. This feature of the work will be greatly enlarged when the General Assembly provides an appropriation therefor.

The REGISTER has hitherto cited the Code of Virginia Annotated by Jno. Garland Pollard as "Va. Code Anno." Beginning with this issue the work will be cited "Va. Code 1904." This is done as a result of suggestions made by Professor Charles A. Graves of the University of Virginia, and with the approval of the Supreme Court of Appeals, which will hereafter adopt the citation referred to. We hope that the West Publishing Company and the authors of the Virginia law books now in process of preparation will see fit to cite the work in the same manner. Uniformity is most desirable.

The employers' liability insurance business has grown to a most wonderful extent in the past few years. Sixty-two millions of dollars have been paid in premiums on such insurance during the decade ending with 1903. The premium rates are not based alone on the hazard of the employment, but the rate varies in different states, according to the attitude of the courts, the juries and the General Assembly as to "damage suits." A careful study of the decisions of the courts of last resort in each state, an examination of the statutes, and the statistics collected as to average size of jury verdicts, have enabled the companies after long experience to ascertain the "cost" of insurance in each jurisdiction. We have not access to the rates obtaining in the various states, but we are reliably informed that Virginia rates indicate that neither the General Assembly, the courts, or the juries are upon the whole considered by the companies as unduly antagonistic to the defendant. We recently heard a lawyer, who has perhaps defended as many damage suits as any lawyer in Virginia, remark that while unjust verdicts were sometimes rendered, especially against corporations, yet in the aggregate the amount of the verdicts would not exceed the amount of damages unlawfully inflicted.

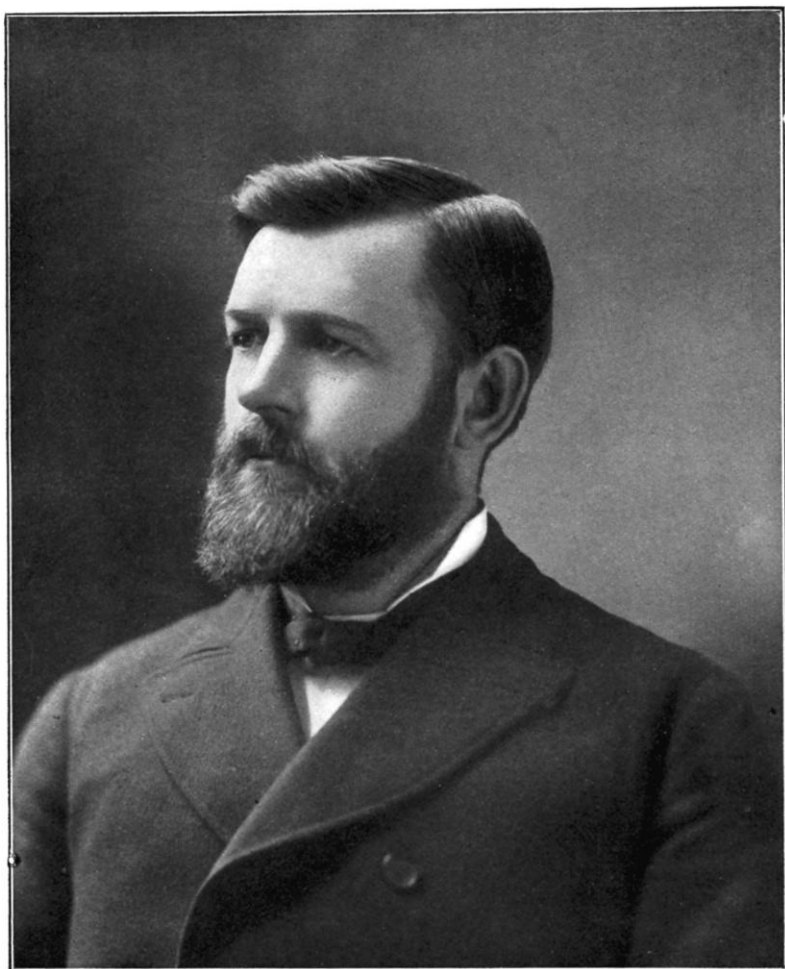
One of the marked tendencies of modern legislation is to hold the employer to stricter liability for personal injury or death suffered by employees in the course of their employment. The Virginia **Workmen's Compensation Acts.** employer's liability provision, as contained in the Constitution and in the Code 1904, is "mere milk and water" in comparison with the liability to which the master is held in many of the most enlightened states of the union and countries of the world. In New York the rule concerning the assumption of risks by employees has been greatly abridged, while in Colorado the fellow-servant defense has been completely abolished. Connecticut in 1901 enacted a very brief but comprehensive statute as follows:

"It shall be the duty of the master to exercise reasonable care to provide for his servant a reasonably safe place in which to work, reasonably safe appliances and instrumentalities for his work, and fit and competent persons as his co-laborers, to exercise reasonable care in the appointment or designation of a vice-principal, and to appoint as such vice-principal a fit and competent person. The default of such vice-principal in the performance of any duty imposed by law on the master shall be the default of the master."

In 1903 the legislature of Massachusetts appointed a commission to consider the relations between employer and employee. Among the measures recommended by the commission was a bill which seems radical indeed in comparison with Virginia legislation. The bill referred to is almost identical with the Workman's Compensation Act of Great Britain. It provides for compensation to the employee for every personal injury arising out of or in the course of the employment, *whether the employer is chargeable with negligence or not.* Germany, Austria, Norway, Denmark, Spain, Italy and Finland have similar laws.

They are founded upon the theory that work which consumes human lives should pay for them, not as a penalty for negligence, but as compensation for material used, the price of which is to be paid by the consumer. In order to recover under the proposed Massachusetts act, the workman must be disabled at least two weeks. The amount of compensation to be recovered is fixed by a scale in which the principal items are these: A sum equal to three years' earnings if the injuries are fatal, payable to those dependent upon the deceased; medical and burial expenses if no dependents

are left; for disabling injuries, half wages during disability; if disability proves to be permanent, compensation may be commuted in one sum in the manner prescribed by the act. The feature of the law is that compensation for injuries becomes in substance a part of the contract of employment, and is payable for accidental injuries for which the employer can not be held liable under the law of negligence nor under the employers' liability acts. Where the employer is guilty of gross negligence the employee may recover upon his legal rights regardless of the proposed statute.



THE HONORABLE E. W. SAUNDERS
JUDGE OF THE SEVENTH CIRCUIT